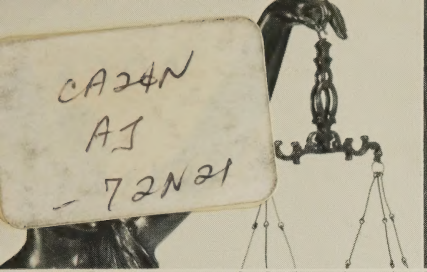
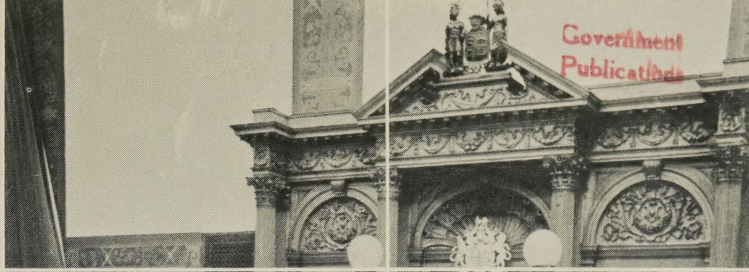
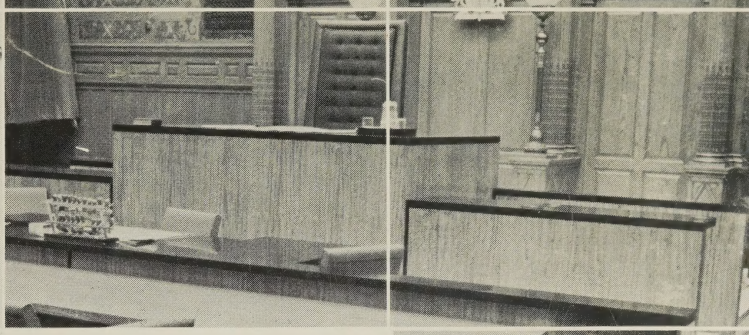
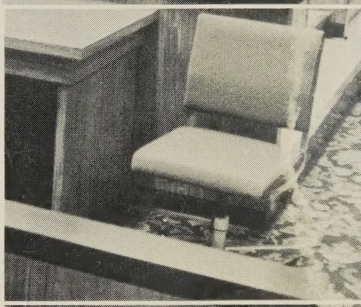


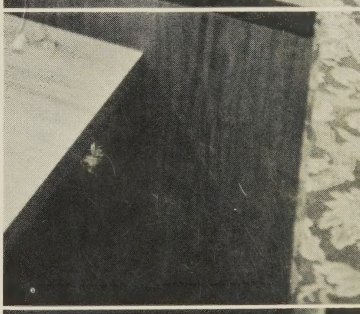




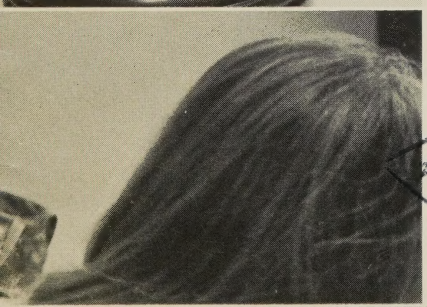
ONTARIO

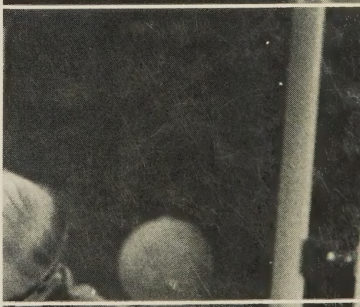
NEW CIVIL RIGHTS PROTECTIONS FOR ONTARIO

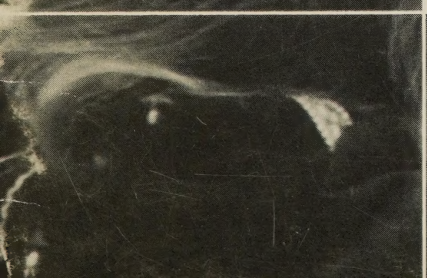


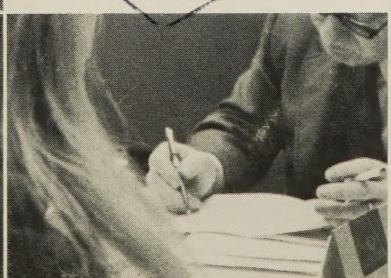


Department of Justice and Attorney General.
January 1972









ONTARIO

PROVINCIAL SECRETARY
FOR JUSTICE

It is with considerable pleasure that I commend this booklet to you. Your Provincial Government feels that the Civil Rights protections proposed by the Honourable James McRuer, and passed by the Ontario Legislature during the summer of 1971, are among the most progressive in the world. However, the changes to the law as it previously existed are extensive and complex.

We realize that it will take time for the people of Ontario to become familiar with this programme. To assist this period of transition we have prepared this booklet outlining the nature of the programme and setting out a few practical examples of how the changes may affect the average citizen. We have also prepared a more comprehensive analysis for use chiefly by the legal profession, judges and persons involved with tribunal work. You may purchase this book at the Ontario Queen's Printer Bookstore, 880 Bay Street, Toronto.

I would welcome your comments, criticisms and inquiries on this most important undertaking.

Yours sincerely,

Allan F. Lawrence, Q.C.,
Provincial Secretary for Justice.

NEW CIVIL RIGHTS PROTECTIONS IN ONTARIO
THE EVOLUTION OF TRIBUNALS

Ontario has well over one hundred Boards, Commissions, Licensing bodies, Directors, Superintendents and other public officials which make decisions affecting the rights of individuals. They are commonly referred to as *tribunals.* They influence everything from the price of milk to the location of apartment buildings.

These tribunals are creatures of the government. They have been set up over the years to assist in the difficult task of serving the people through the administration and enforcement of the ever-increasing demand for rules of social order in the Province. Government today is too complex to function without some delegation of authority. It was a natural development that some of the regulatory powers of decision would be passed along by our elected representatives to other public bodies.

Governmental power is delegated to tribunals not only for reasons of efficiency and convenience. It is done out of the very real necessity of providing members of the public with expert watchdogs to protect their interests against such evils as securities frauds, illegal strikes, discrimination in services and employment practices, consumer exploitation and damage to the physical environment.

In some situations, it is essential that a tribunal have some independence from the government so that it can more fairly adjudicate the claims of individual citizens against the government.

However, this delegation of authority to tribunals of various sorts bears a price. Power is vested in persons who are one step removed from direct political control because they are appointed and not elected. It is true that the government which appoints these tribunals is ultimately responsible to the electorate for their behaviour. But in the ordinary course of things it is impractical to expect any government to police all of the tribunals' activities all of the time.

Also it must be remembered that these tribunals are not courts. Although at first glance tribunal hearings may appear to be the same as court hearings, in fact the tribunal members are not judges and the procedures followed are not necessarily the same as in a courtroom.

What measures of control should a responsible government provide when setting up a tribunal one step removed from the people? The most basic obligation is to ensure that the civil rights of citizens who become subject to the jurisdiction of these tribunals are adequately protected. To disregard such rights might be to permit the tribunals to operate in a totalitarian fashion remote from the people and insensitive to individual justice.

This is not to say that all tribunals in Ontario have perpetrated injustices. Quite the contrary. On the whole the record of our administrative tribunals in Ontario is one of devoted service, fairness, enlightenment and sound management, second to none in Canada. Yet with the increasing number of tribunals and the volume of work which they must handle, it was inevitable that the rights of some citizens were infringed at times.

A PROGRAMME FOR THE PROTECTION OF CIVIL RIGHTS

The Honourable J. C. McRuer in the Royal Commission Inquiry into Civil Rights, rendered great public service by documenting situations in which rights had been infringed, or where the law setting up a tribunal created a possibility of a citizen's rights being infringed. It was on the strength of Mr. McRuer's findings and his recommendations for far-reaching procedural safeguards that the Government of Ontario developed a comprehensive plan of citizen guarantees and protections against injustices at the hands of all types of tribunals.

Important steps were taken in 1968 leading toward the enactment of such laws as *The Expropriations Act, 1968-69, The Provincial Courts Act, 1968* and *The Law Enforcement Compensation Act, 1968* (now *The Compensation for Victims of Crime Act, 1971).* These introduced concepts which have since been recognized and adopted by other jurisdictions.

Also in 1968, the Government made public two draft laws which applied to most tribunals having power to decide matters following a hearing of interested parties. One of these, the Statutory Powers Procedure Act, established minimum uniform procedures for tribunals exercising such powers following a hearing and was designed to provide new protections for the rights of individuals. The second, the Judicial Review Procedure Act, extensively revised the procedure on applications for review of the decisions of tribunals by the courts by making such applications simpler, more expeditious and effective, and less costly. These draft laws were introduced in this manner in order to evoke discussion and constructive criticism which might then lead to an improvement of the measures. After considerable debate and consultation in the Legislature and with members of the public, the Bench, the Bar and the tribunals themselves, improved versions were introduced on June 4, 1971, and shortly thereafter enacted as *The Statutory Powers Procedure Act, 1971* and *The Judicial Review Procedure Act, 1971.* They come into force in early March, 1972.

Filling out this comprehensive plan of citizen guarantees and protections were three additional statutes passed in 1971: *The Public Inquiries Act, 1971* (defining in some detail the procedure for inquiries by Royal Commissions and other investigators, and giving new procedural protections to parties affected); *The Civil Rights Statute Law Amendment Act, 1971* (amending 91 individual statutes to clarify the nature and scope of decision-making powers and procedures under them as they affect the rights of individuals); and *The Judicature Amendment Act, 1971* (establishing and defining the powers of the Divisional Court of the High Court of Justice for Ontario, which is a court of appeal to deal with appeals from tribunals). These statutes also come into force in early March, 1972.

All these statutes are inter-related and their provisions constitute a complex mosaic. They represent far-reaching and substantive changes in the law relating to the powers of provincial tribunals and inquiries as they affect the rights of citizens and society as a whole.

When introducing the Bills in the Legislature, the Honourable William G. Davis, Prime Minister of Ontario, had this to say:

The Government of Ontario is placing before the people of this Province the most comprehensive programme for the development of individual rights that has been developed within Canada. When these Bills are brought into force, they will bring to the people of Ontario a code of administrative law procedure that will be the first of its kind in the Commonwealth.

Our programme has implemented most of the recommendations in the first report of the McRuer Royal Commission Inquiry into Civil Rights. That Commission was first set up by the Government in 1964 and resulted in Reports covering some five volumes and nearly 2,300 pages. Mr. McRuer's monumental contribution to the Province represented as scholarly and definitive a treatise on the subject of civil rights as will be found anywhere.

THE PURPOSE OF THIS BOOKLET

The enactment of the five new laws is part of the Government's programme of civil rights protections. They are lengthy and complex, raising the need to explain their practical significance to the public. The new protections can only be effective if they are known and claimed by individual citizens, or their lawyers and agents. Therefore it was considered both necessary and desirable to produce this booklet to assist citizens in understanding how they might be affected by these laws and how they might claim the new protections. This is not a complete examination of the subject. It is merely intended to give the average citizen an indication of what the new laws are all about. On a broader scale, the booklet should give to the individual citizen a better understanding of the administrative process which is an ever-increasing aspect of government today.

This booklet has been prepared for purpose of information only. No attempt is made to interpret the statutes involved or the rules and regulations under them. This task is the proper function of the courts.

A more detailed and legalistic manual of practice has been prepared for administrators, members of tribunals or inquiries, lawyers or other interested citizens. It is available at a nominal cost from the Government of Ontario Bookstore, 880 Bay St., Toronto, your local M.P.P. and other government sources.

HOW DO THE NEW CIVIL RIGHTS PROTECTIONS WORK IN PRACTICE?

It is impossible to describe all the new civil rights protections in the context of this booklet. However, four examples of hypothetical case histories are set out, showing the new civil rights protections in real-life operation. Each example focuses principally on one of the new Acts. The four examples deal with:

(1) a home-owner subject to school expropriation;

(2) a widow receiving family benefits;

(3) an applicant for a used-car salesman's licence; and

(4) an accountant for a company which later gets into financial difficulties.

These examples represent only a small proportion of the potential situations which could arise in dealings with various provincial government tribunals and inquiries operating under the authority of various statutes in Ontario. They are merely a hypothetical "slice of life" by which the reader will gain useful knowledge.

EXAMPLE I: EXPROPRIATION PROCEEDINGS (focusing on *The Statutory Powers Procedures Act, 1971)*

John Jones owns his home which is located next door to a large high school. The school board wants to expand the school to accomodate an increasing number of students, and therefore finds it necessary to expropriate a number of private homes next to the schoolyard, including Jones' house.

Following the procedures in *The Expropriations Act,* the school board delivers a notice of its intention to expropriate to Jones, and also publishes the notice once a week for three weeks in the local newspaper. Jones has the right to a hearing before an inquiry officer if he questions the necessity of the expropriation. However, believing that school expansion is inevitable in his area, he decides not to ask for a hearing. He merely wishes adequate compensation for the loss of his home.

The school board then registers its plan of expropriation in the local land registry offices, and begins negotiations with Jones on the price of his home. Jones is not satisfied with the amount the board offers. He knows that *The Expropriations Act* states that compensation is to be based primarily on the market value of the land. This amount can be increased by the Land Compensation Board to cover the cost of relocating in a house at least equivalent to the house expropriated. So he decides to hold out for more.

The school board must deliver formal notice of expropriation to Jones within one month after registering its plan. Within three months of registration the board must deliver to Jones its latest offer of compensation.

Now Jones is still not satisfied with this latest offer. Either he or the school board have the right to require that the compensation be negotiated by a board of negotiation consisting of at least two members appointed by the Government. If no settlement is reached then either Jones or the school board may serve notice of arbitration on the other party, requiring that the compensation be arbitrated by the Land Compensation Board. Alternatively, Jones and the school board can agree to dispense with negotiation proceedings, and go directly to the Land Compensation Board for final arbitration.

In all the proceedings up to this point, Jones has taken advantage of the procedural protections relating to notice, the right to appear before an inquiry

officer, the requirement of prior registration of the plan of expropriation, notice of the plan of expropriation and final offer of compensation, and the right to request a board of negotiation. All these rights were provided in *The Expropriations Act, 1968-69,* and were among the first phase of civil rights protections implemented by the government as a result of the recommendations of the McRuer Report.

It is before the Land Compensation Board that the latest series of civil rights protections provided in the *Statutory Powers Procedure Act, 1971* are most clearly brought into focus. The protections of this Act are given to any person coming before a tribunal which:

a) has the power under a provincial statute to make a decision

and b) must either hold a hearing or give the parties affected the opportunity for a hearing before making its decision.

The Land Compensation Board is such a tribunal. Therefore, many of the practices and procedures before the Board which are to govern the rights of Jones and others are clearly specified in the statute law for the first time.

For example, *The Statutory Powers Procedure Act, 1971* guarantees Jones the right to be represented by a lawyer or an agent at the hearing. Also it gives him or his lawyer or agent the right to question the school board officials on the other side or their appraisers. It also stipulates that the hearing must be held in public, unless the Board is of the opinion that the arbitration will involve matters of public security or intimate financial or personal matters. In this case the hearing can then be held in private. Finally, it provides that Jones is entitled to a written decision of the Board, with reasons if he requests them.

The above four protections are part of the new *Statutory Powers Procedures Act, 1971* which is in essence, a code of procedure applying to hearings of all tribunals having power under a provincial statute to make a decision unless the statute creating the tribunal deliberately exempts it from the code.

If the Land Compensation Board refuses to let Jones be represented by a lawyer or agent, or refuses his lawyer or agent the right to cross-examine the school board's appraisor, or conducts the hearing in private, without the requisite conditions being present, or refuses to give Jones written reason for its final decision after Jones' request for the reasons, such defects may be the basis for challenging the decision of the Board. This may be done by applying to the new Divisional Court (established under *The Judicature Amendment Act, 1971),* under *The Judicial Review Procedure Act, 1971.*

This court then decides whether or not the proper procedures were followed. If not the court could declare the proceedings of the Board invalid or could order the Board to start over again, providing the proper protections. The last word on these procedural protections, as well as on the question of the amount of compensation, generally lies with the Divisional Court, unless there is a further appeal to the Court of Appeal in certain limited circumstances.

As a practical matter, it is unlikely that the Land Compensation Board or any other tribunal for that matter, would make any procedural mistake once it becomes familiar with the new code of procedure. However, it is necessary that citizens coming before these tribunals have their procedural rights *clearly stated* and have

available to them the *mechanism to assert those rights* should the board or tribunal make the occasional mistake. This is the general purpose and intent of *The Statutory Powers Procedure Act, 1971.* Prime Minister Davis, when first introducing this legislation into the Legislature, expressed the long run objective:

> Perhaps the ultimate compliment which the Legislature might receive from this legislation would be that it becomes such a part of everyday practice and procedure that we would cease to be aware of its existence.

EXAMPLE II: RECEIVING FAMILY BENEFITS (focusing on *The Civil Rights Statute Law Amendment Act, 1971)*

Mrs. Brown is an unemployed widow with three young children. She has been receiving an allowance and other benefits totalling $282. per month from the Department of Social and Family Services under *The Family Benefits Act,* ever since her husband's death three years ago.

Mrs. Brown is visited regularly by a field worker from the Department who sees that she is assisted whenever necessary, and that she continues to remain eligible under the terms of *The Family Benefits Act.*

During one such visit, Mrs. Brown happens to mention that she is now receiving an additional cheque each month for $40. on account of her husband's death. The field worker assumes, without checking, that this is from the Workmen's Compensation Board, and notes this in the monthly report to his supervisor. As a result, Mrs. Brown's monthly payments are reduced by the Director of Family Benefits by $40. to $242. per month. Mrs. Brown is perplexed because the $40. is in fact a monthly donation from the Widow's Fund of the church which she and her husband attended. There is no guarantee that the donation will continue on a month-to-month basis since the Widow's Fund is nearly exhausted.

When Mrs. Brown receives notification that her benefits are to be reduced she requests a review by the Board of Review established under *The Family Benefits Act.* Included in the new *Civil Rights Statute Law Amendment Act, 1971* are a number of improvements in the procedures of the Board of Review as they affect the rights of individuals appearing before it. Specifically, it is provided that any of the internal government reports to be submitted to the Board of Review at the hearing must first be shown to the person affected by them, and that person must be given a chance to examine them. Thus, it would seem that the new legislation would enable Mrs. Brown to see the field worker's report of her extra $40. per month. By having the opportunity to see the report, Mrs. Brown will be able to discover that the monthly donation of $40. is incorrectly characterized as a Workmen's Compensation payment. She can easily point this out to the Board of Review and have the original monthly payment of $282. restored.

If the Director of Family Benefits fails to give her the report, then on that ground alone she can take the matter to court under *The Judicial Review Procedure*

Act, 1971 and, if successful the new Divisional Court will order the Director to give it to her. If the Board of Review has the report and proceeds with the hearing, and makes its decision without Mrs. Brown either knowing about it or seeing it, those facts alone may be sufficient for the Divisional Court to set aside the Board's decision. Even if Mrs. Brown sees the field worker's report but is unable to convince the Board of Review that her new-found $40. a month should not be included as income under the Act, she can appeal the Board's interpretation of the Act to the Divisional Court.

Like John Jones before the Land Compensation Board, Mrs. Brown now has her procedural rights before the Board of Review clearly stated by *The Statutory Powers Procedure Act, 1971.* Such matters as the right to reasonable notice of time and place of the hearing, the right to a lawyer or agent, or right to question the field worker and to call upon people knowing her situation to explain to the Board the source of the $40. a month, etc. are guaranteed to Mrs. Brown. Also, if the Director of Family Benefits intends to question Mrs. Brown's good character or the propriety of her conduct as an issue, Mrs. Brown under the new legislation has the right to prior notice of reasonable information of such allegations — to give her a chance to prove them wrong at the hearing.

In summary, *The Civil Rights Statute Law Amendment Act, 1971,* and *The Statutory Powers Procedure Act, 1971* operate together to provide Mrs. Brown with improved procedural protections and greater opportunity to show that the $40. reduction in her benefits by the Director of Family Benefits was an incorrect decision.

EXAMPLE III: APPLYING FOR A USED CAR SALESMAN'S LICENCE

(focusing on *The Judicial Review Procedure Act, 1971)*

Gilbert Larose is a young man who wants to go into the used car business as a salesman. He applies for a job at the main office of a well-known used car dealer and is told that before he can be hired he must be registered under *The Motor Vehicles Dealers Act.*

Larose applies for registration through the local office of the Registrar of Used Car Dealers and Salesmen (which in most Ontario centres is located at the same address as the Consumer Protection Bureau). However, the Registrar refuses Larose's application because he has no experience in the field and also because he has a number of outstanding debts.

Upon receipt of the refusal from the Registrar to register him, Larose requests the Commercial Registration Appeal Tribunal to grant him a hearing to see if the Registrar can be overruled. When the date appointed for the hearing comes around, Larose is astonished to learn that one of the members of the Tribunal before whom the hearing will be held is a used car dealer and a direct competitor of the used car dealer with whom he hopes to get a job. The other member of the Tribunal is the full-time chairman.

Larose is afraid that he will not get a fair hearing from the Tribunal. Larose reasons that at least one of the members may be biased against him since he plans to work for a dealer in direct competition with one of the members. Therefore, exercising his rights under *The Statutory Powers Procedure Act, 1971,* Larose requests an adjournment of the hearing in order to consult his lawyer. The adjournment is granted for a period of one week only.

Larose's lawyer talks over the entire situation with him the next day and tells him that there are two reasons the court might prevent the Tribunal as it is now established from going ahead with the hearing the next week. One reason would be that one member of the Tribunal is apt to be biased against him because of his competitive position. This argument could be made through a special procedure in the courts known as an application for prohibition. If the court decides that Larose would not receive a fair hearing because of the possible bias against him, then it would issue a prohibition order. This order would, in effect, prevent the Tribunal as now established from holding the hearing.

The other reason is related to the statute setting up the Commercial Registration Appeal Tribunal. The statute and the regulations which complement the statute, provide that there must be at least three members available at any time for the Tribunal to function legally. Larose's lawyer tells him that there is a regulation, however, which gives the chairman the power to declare that less than three members may hold a hearing. Thus, a conflict appears to exist between the provisions in the statute and the provisions in the regulations. The lawyer advises that the course to take on this second ground is to start an action against the Government asking for a declaration that the regulation is invalid because it conflicts with the statute itself. This is a complex action indeed.

Before *The Judicial Review Procedure Act, 1971,* Larose's lawyer would have been forced to launch two separate court proceedings, one a reasonably simple one whereby he applies for prohibition (an order forbidding the possibly biased member of the Tribunal from sitting) and the other a complex court action against the government for a declaration (an order declaring the regulation invalid). To proceed with both actions separately would take much time and involve considerable expense.

The Judicial Review Procedure Act, 1971 brings together a number of different types of proceedings, including an application for a prohibition order and an action for a declaration, into a single form of summary application to the new Divisional Court. This single form of summary application is to be known simply as "an application for judicial review". The procedure is simpler and quicker and thus less costly. It also eliminates many of the complex technicalities which in the past have defeated otherwise meritorious proceedings brought by deserving citizens.

In Larose's case, he could quickly obtain a decision from the Divisional Court on both questions:

(1) as to whether the used car dealer could sit as a member of the Tribunal on Larose's hearing; and

(2) whether the hearing could be held by less than three members of the Tribunal.

Once these questions were decided, Larose would be able to get on with his hearing before the Tribunal (properly constituted), with virtually all of the new procedural protections that John Jones and Mrs. Brown had in their particular situations. If the Tribunal's decision goes against him, he can appeal to the Divisional Court on questions of law or fact. The Court can either make a final ruling on the case, or it can send the matter back to the Tribunal for a new hearing in the proper manner and let them decide the matter. These rights of appeal are provided under *The Civil Rights Statute Law Amendment Act, 1971.*

Therefore, Larose has in effect two opportunities to prove that the Registrar was wrong concerning his lack of experience and financial responsibility: (1) before the Tribunal; and (2) before the Divisional Court. In so doing he can claim procedural protections in a simple manner which is free of many of the technicalities and delays which used to exist.

EXAMPLE IV: AN ACCOUNTANT AFFECTED BY A PUBLIC INQUIRY

(focusing on *The Public Inquiries Act, 1971)*

As a result of the financial collapse and bankruptcy of a large lending company, there is a public outcry on the part of a great many shareholders who are left with virtually worthless pieces of paper to show for their investment. Since it has become a matter of public concern, the Government decides to set up a public inquiry to investigate the reasons for the collapse. A single Commissioner is appointed to conduct the inquiry. He announces that public hearings on the matter will start in two weeks at a designated time and place.

The Commissioner, acting under proper procedures, summons to the hearing four directors of the bankrupt lending company and also all the accountants of the company who have provided professional services over the previous two years. This is done to obtain the complete story of the financial affairs of the company. *The Public Inquiries Act, 1971* sets out procedural protections for these people summoned as witnesses in the sense that their evidence cannot be later used against them in later court proceedings except in a prosecution for perjury.

There is an accountant, one Frank Perone, who is not among those summoned because his professional services were provided more than two years prior to the bankruptcy, and he had therefore been overlooked by the Commissioner. Perone knows that he was involved in certain transactions of the lending company which may be involved in some of the company's financial difficulties. He is concerned that he be permitted to appear at the hearing to tell his story concerning the transactions so that the truth may be placed before the Commissioner and he will not be implicated in any possible scandal. *The Public Inquiries Act, 1971* gives Perone, as one who has a substantial and direct interest in the matter, the right to give evidence at the hearing and to call witnesses and to cross-examine other witnesses on the matters relevant to his situation. Before the new legislation, such an

appearance would have been merely at the discretion of the Commissioner and not as of right.

Now suppose Perone decides not to give evidence at the hearing or to call witnesses because he figures that the transactions several years ago were not really relevant to the collapse and bankruptcy of the company, and therefore not of much interest to the Commission. But then suppose that to his dismay, during the hearing, the transactions do become matters of some importance, and allegations of scandal arise and Perone is implicated. Under *The Public Inquiries Act, 1971,* before the Commissioner can make any finding of misconduct on the part of Perone in the report following the inquiry, he must give Perone a reasonable notice of the substance of the misconduct alleged against him and allow full opportunity during the inquiry for him to explain his position, either in person or by his lawyer. This is to allow Perone to bring his own witnesses to refute any such allegations of misconduct against him. Prior to the enactment of *The Public Inquiries Act, 1971,* the Commissioner would have been perfectly at liberty to write his report and submit it to the Government without ever giving Perone a chance to explain himself. This deficiency is corrected in the new legislation.

TO WHAT TRIBUNALS DO THESE NEW CIVIL RIGHTS PROTECTIONS EXTEND?

The four examples discussed above are merely illustrations of the practical application of the new civil rights protections which have become part of our law. One could find illustrations in a great many fields involving other boards or tribunals such as the Ontario Energy Board, the Farm Products Marketing Board, the Ontario Highway Transport Board, the Ontario Securities Commission, the Ontario Labour Relations Board or the Ontario Municipal Board.

The government has already reviewed well over 300 statutes, many of which give tribunals the power to make decisions or regulations or to conduct inquiries or investigations. The purpose of the review is to make the statutes conform as far as practicable with the recommendations of the McRuer Report which essentially sought to protect the civil rights of citizens in their dealings with tribunals. With some of the statutes, it was found to be sufficient to allow the general procedures of *The Statutory Powers Procedure Act, 1971* to apply to hearings of the tribunal or body concerned. With other statutes it was found necessary to have an amendment to the particular statute to adequately protect civil rights without unduly disrupting the tribunal exercising the power to make a decision. Some 91 statutes of the Province fell into the latter category, and the amendments to them comprise the voluminous *Civil Rights Statute Law Amendment Act, 1971,* covering nearly 300 pages. In the months ahead, there will be many more statutes receiving special treatment respecting procedures and appeal rights.

Without going into the complexities of the new statutes or the numerous amendments to the old statutes, it should be borne in mind that there is one central thread

running throughout all of this legislation: *procedural fairness to the people who come before tribunals making statutory decisions.* Whenever a citizen is before a provincial government tribunal for a hearing and a decision, he can virtually always assert and insist on certain basic rights as a result of this legislation. For purposes of clarity and simplicity, these basic rights to procedural fairness are listed as follows:

1. The right to reasonable *notice of the time and place of the hearing.*
2. The right to reasonable *information of any allegations* respecting the good character, propriety of conduct or competence of a party if such matters are an issue.
3. The right to a *public hearing* unless public security or intimate financial or personal matters are involved.
4. The right to be *represented by a lawyer or an agent.*
5. The right to *call and examine witnesses,* and to *cross-examine other witnesses.*
6. The right to *protection against self incrimination* respecting the use of evidence in any subsequent civil or criminal proceedings (as far as the Province can grant that right).
7. The right to reasonable *adjournments* of a hearing.
8. The right to a *written decision, with reasons upon request.*

Each of these rights is important in its own way. But it is the eighth right listed — the right to a written decision with reasons — which is probably the most important. A citizen really cannot know whether he has been dealt with fairly by a tribunal until he knows the reasons for its decision. Also, if there is a right of appeal to the Divisional Court or another body, a citizen has a difficult time in deciding whether to appeal or not if he does not have the Tribunal's reasons for its decision.

HOW DOES A PERSON GET HELP IN TAKING ADVANTAGE OF THESE NEW CIVIL RIGHTS PROTECTIONS?

All the tribunals and inquiries set up by the Government of Ontario have been advised and instructed on the new protections to be given citizens appearing before them. It is to be hoped that many of the protections will be made available automatically by the tribunals, without the necessity of having a lawyer or other advisor present. As noted by Prime Minister Davis when introducing the new legislation:

> These Bills are not designed for lawyers but are designed to establish and ensure the rights of individuals wherever they come into contact with the many administrative processes of modern-day government within the jurisdiction of the legislature.
>
> The approach which we have taken will ensure that the individual will not have to maintain his rights but that the system itself will maintain those

rights and permit the type of fair administration which will not make any demands upon the individual himself.

However, it is recognized that there may arise occasionally a situation in which some of the protections are not provided by a particular tribunal. In this case, a citizen who has any doubts about a particular proceeding should consult a lawyer as soon as possible. In many cases it is important that the lawyer be consulted *before* the tribunal holds a hearing because it may be necessary, as a preventative measure, to have the lawyer attend the hearing to represent and argue the citizen's case.

But it must be clearly understood that a citizen does not lose his civil rights protections before the tribunal if he does not have a lawyer with him. He has every right to claim these protections himself, or to have an advisor or friend do it for him. And even if he has no one with him at the hearing, he may find it helpful to see a lawyer, advisor or friend after the hearing to see whether any of the civil rights protections were denied, or whether the tribunal's decision should be appealed. Where there is clear evidence of the denial of the civil rights protections, or if it is decided to appeal the decision of the tribunal to the Divisional Court, although the citizen is not prevented by law from arguing his own case before Divisional Court, it is desirable and essential that a lawyer be retained to argue the case before this Court.

For the persons who do not have the financial means to consult a lawyer, the Province of Ontario has a comprehensive Legal Aid Plan. Under this Plan, the Legal Aid Area Director or Area Committee in each county or district throughout the Province has a discretion to grant a legal aid certificate to persons appearing before a tribunal or appealing a decision from a tribunal to a court. This legal aid certificate is granted upon adequate proof of both financial need and the seriousness of the case. The certificate entitles the recipient to hire a lawyer of his own choosing who is willing to accept payment of his fees from the governmnt at the rate of 75% of a normal schedule of fees established. In some cases, the legal aid recipient may be asked to pay part of these fees.

Legal assistance for persons in need can also be obtained from some legal aid offices which have arrangements with student lawyers. There are such offices located in Toronto, London, Kingston, and Windsor. Also, some community agencies such as the Civil Liberties Association and the Chamber of Commerce can provide assistance.

Some special interest organizations have trained people available who can provide helpful advice and represent people before certain tribunals. For example, many trade unions have business agents who are skilled in representing people before the Workmen's Compensation Board. The Workmen's Compensation Board itself has several "Workmen's Advisors" who are government-paid officials whose job it is to advise and represent workmen before the Board. There are some accountants and stockbrokers who have experience representing people before the Ontario Securities Commission. Occasionally there are social workers and welfare rights groups who are skilled at representing parties before the Board of Review established for hearings under *The Family Benefits Act, The General Welfare Assistance Act,* and *The Vocational Rehabilitation Services Act.*

Finally, it is one of the duties of a Member of the Legislature to see that his constituents are properly represented before provincial government tribunals.

But above all, it should be remembered that if a person is in doubt as to how to claim his civil rights protections before a tribunal, a *qualified lawyer* is the best person to see — and preferably before the hearing takes place.

THE FUTURE

The new statutes become law in Ontario in early March, 1972. This will complete another step in the Government's comprehensive programme for the development and protection of civil rights in Ontario. There will likely be more legislation on this subject produced in the future. This programme is really part of a continuous process through which the Government and the people, together, evolve a system of citizen protection through on-going review and reform. In the Legislature, Prime Minister Davis described the process in these words:

> The programme we have embarked upon is designed to make individual rights an established fact in every system for which we are responsible. As with so many aspects of the administration of justice and law enforcement in our country, Mr. Speaker, we have come to accept them as part of our everyday living. We must always continue to review them and enhance them so that they will be readily available to all of us to provide both the public and private protection which ensures the development of an orderly society.

Members of the public owe a very real duty to participate in the improvement of this pioneering and extensive programme. The undertaking is so far-reaching that the Government cannot hope to provide a definite answer to all the issues which will arise under the statutes enacted now or in the future. That is why your help is needed.

The Honourable Allan F. Lawrence, Provincial Secretary for Justice for Ontario, sincerely encourages and welcomes any comments and constructive criticism on this comprehensive programme. Many bold and imaginative steps have already been taken, yet much remains to be done. It is the very essence of democracy that citizens can work together with government towards the achievement of a complete programme of justice for the individual.

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Department of Justice and Attorney General.
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